

FILED
BILLINGS DIV.

2008 JUL 14 PM 3 06

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

PATRICK E. LUTHE, JR.
BY _____
DEPUTY CLERK

SAM E. JONES,

Plaintiff,

vs.

DEACONESS BILLINGS CLINIC,
NORTHERN ROCKIES KIDNEY
CENTER, DR. GREG MOCK, and
TERRY A. HOUSINGER,

Defendants.

Cause No. CV-06-15-BLG-RFC

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On May 5, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation as to Defendants' Motion to Dismiss (*Doc. 25*). *Doc. 34*. Magistrate Judge Ostby recommends this Court dismiss Plaintiff's complaints for failure to state a claim upon which relief may be granted. Magistrate Judge Ostby further recommends that this Court certify pursuant to Rule 24(a)(3)(1) Fed.R.App.P. that any appeal of this decision would not be taken in good faith.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiffs filed documents entitled "Demand Letter for Payment for Damages and Expenses" on May 19, 2008 (*Doc. 36*) and June 19, 2008 (*Doc. 37*). Although the Court recognizes that pro se litigants must be given the benefit of the doubt, these documents merely reiterate the allegations in the Amended Complaint and

cannot reasonably be construed as objections. Further, it is doubtful that these documents are objections considering that Plaintiff did not receive his copy of the Findings and Recommendations. The copy mailed to his last known address was returned to the Court undeliverable. *Doc. 38*. Plaintiff has been notified previously that failure to keep the Court informed of his current address could result in dismissal of his lawsuit. *Doc. 14*.

Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review *de novo* the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

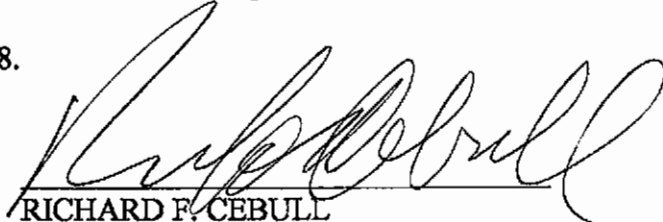
Here, Magistrate Judge Ostby correctly concluded that Plaintiffs failure to seek review of the Montana Medical-Legal Panel before filing this suit deprives this Court of jurisdiction over Plaintiffs medical malpractice claims. *See* Mont. Code Ann. § 27-6-701 ("[n]o malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered."). Further, Plaintiff's failure to allege any specific act of wrongdoing against Defendants Housing and Penton means they are not proper Defendants to his lawsuit. Finally, to the extent Plaintiff alleges Hill-Burton Act claims against the institutional Defendants, Magistrate Judge Ostby is correct that Plaintiff's malpractice allegations do not state a claim under that law.

For those reasons, the Court concludes Magistrate Judge Ostby's Findings and Recommendation are well-grounded in law and fact and are adopted in their entirety. **IT IS HEREBY ORDERED** Defendants' Motion to Dismiss (*Doc. 25*) is **GRANTED**; Plaintiff's Complaint (*Doc. 4-2*) and Amended Complaint (*Doc. 8*) are **DISMISSED WITHOUT PREJUDICE**.

Further, it is **CERTIFIED** pursuant to Rule 24(a)(3)(1) Fed.R.App.P. that any appeal taken by from this disposition would not be in good faith.

The Clerk of Court shall notify the parties of the making of this Order and close this case.

DATED the 14 day of July, 2008.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE